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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**

**MORELOCK ENTERPRISES,**

**Plaintiff,**

**Civil No. 3:04-cv-00583-PA**

**WEYERHAEUSER CO.**

**Defendant.**

**DECLARATION OF GREGORY BARUCH**  
**IN SUPPORT OF BILL OF COSTS AND MOTIONS**  
**FOR AWARD OF COSTS AND FEES**

Pursuant to 28 U.S.C. § 1746, Gregory Baruch declares as follows:

1. I am a partner in the law firm Berry & Leftwich and one of the counsel of record in

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this case. This Declaration is submitted in support of Plaintiffs' Bill of Costs, Plaintiffs' Motion for Award of Attorneys' Fees, and Class Counsel's Motion for Attorneys' Fees and Costs.

**Bill of Costs: Statutory Costs**

2. Class Counsel in this action have incurred the following costs which are taxable by the Court under 28 U.S.C. § 1920, in the total amount of \$14,564:

- (a) **Fees of the clerk and marshal and docket fees.** Class Counsel has incurred \$150 in filing fees.
- (b) **Court reporter fees necessarily obtained for use in the case.** Class Counsel spent at least \$13,911.29 on transcripts and court reporter fees for depositions used at trial, as follows: Howell (\$1145.05); Bamber (\$136.85); Webber (\$899.80); Lockwood (\$1233.05); Sabalaske & Spencer (\$1681.25); Princehouse (\$1988.20); Redman (\$817.70); Roach (\$2532.03); McMurtrie & Straka (\$1206.46); Rossi (\$1181.60); Hopper (\$427.50); Cranford (\$407.05); Connolly (\$254.75).
- (c) **Fees and disbursements for printing and witnesses.** Class Counsel spent at least \$503 on witness fees for witnesses who appeared at trial or in perpetuation depositions used at trial (Webber, Lockwood, Collett, Wheeler, Novak, Chulos, Robbins, Howell, Sabalaske).
- (d) **Fees for exemplification and copies of papers.** Although Class Counsel spent substantial amounts on copying and exemplification, it is too difficult to determine which copies were "necessarily obtained" for purposes of 28 U.S.C. § 1920. Accordingly, the Class is seeking recovery of these expenses as part of the attorneys'

fee under Section 4 of the Clayton Act.

Pursuant to 28 U.S.C. § 1924, I hereby verify that all of the costs set forth above are correct and were necessarily incurred in this case, and the services for which fees are set forth were actually and necessarily performed. In addition, there are also a small number of additional costs as to which we are still gathering documentation. We will submit and substantiate any such additional costs shortly.

**Additional Costs That May Be Recovered As  
Part Of The Award Of Attorneys' Fees**

3. Class Counsel has also incurred further costs that may be recovered as part of the award of attorneys' fees under Section 4 of the Clayton Act, 15 U.S.C. § 15(a). *See Confederated Tribes of Siletz Indians v. Weyerhaeuser Co.*, 2003 WL 23715982, \*8-\*9 (D. Or. Oct. 27, 2003). Including the amounts set forth in the Bill of Costs, total costs reasonably and necessarily incurred in this action and recoverable either as costs or as fees are as follows:

<b>Travel</b>	\$133,222.76 [Berry & Leftwich]
	\$727.15 [Karnopp Peterson]
<b>Mock Trial Expenses</b>	\$55,787.87
<b>Witness Fees</b>	\$850.00 [Berry & Leftwich]
	\$90.07 [Karnopp Peterson]
<b>Depositions and Transcripts</b>	\$108,457.33 [Berry & Leftwich]
	\$680.18 [Ramis Crew]
<b>Westlaw and Pacer Research</b>	\$5,425.78 [Berry & Leftwich]
	\$260.72 [Ramis Crew]

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<b>Overnight Delivery</b>	\$21,969.26 [Berry & Leftwich]
	\$1,780.77 [Ramis Crew]
	\$598.50 [Karnopp Peterson]
<b>Photocopying - Third-Party</b>	\$44,076.60 [Berry & Leftwich]
	\$3,850.88 [Ramis Crew]
<b>Photocopying - Internal</b>	\$49,069.25 [Berry & Leftwich]
	\$1,715.60 [Karnopp Peterson]
	\$3,535.14 [Ramis Crew]
<b>Bates-stamping and reproduction - Third Party</b>	\$4,320.44 [Ramis Crew]
<b>Document Retrieval (from Courts or counsel in other cases)</b>	\$15,429.00
<b>CD duplication of documents</b>	\$600.00 [Ramis Crew]
<b>scanning depositions</b>	\$280.00 [Ramis Crew]
<b>Class Notices</b>	\$1,044.82
<b>Long-Distance &amp; Conference Calls</b>	\$2,213.42 [Berry & Leftwich]
	\$173.98 [Ramis Crew]
<b>Process Servers</b>	\$251.68
<b>Courier Services</b>	\$206.77
<b>Fax:</b>	\$1,420.00
<b>Postage:</b>	\$305.21
<b>Court Admissions:</b>	\$300.00

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**Filing Fees:** \$150.00

4. The combined total of these costs is \$458,793, including the amounts set forth in the Bill of Costs, or \$444,229 if the amounts sought in the Bill of Costs are subtracted.

**Additional Costs As To Which Class Counsel Seek  
Reimbursement From The Common Fund**

5. In addition to the costs described above, Class Counsel also incurred additional costs that were actually and necessarily incurred in the prosecution of the Class's claims and that may be awarded from the common fund. They are as follows:

**Expert Witness Fees (Consulting and Testifying)**

ApplEcon (Dr. Janet Netz and others)	\$792,311.44
Dr. Morton Kamien, Leaf Group, & Dr. Charles Hunter	\$379,747.00
Mason, Bruce & Girard (Mark Rasmussen)	\$36,597.31
Paul Ehinger	\$18,600.50
Douglas Princehouse	\$3,217.25

SUBTOTAL: \$1,230,473.40

**Trial Graphics Consultants (NextPoint) for**

demonstratives, presentation of exhibits at trial	\$116,635.60
Jury research (Persuasion Strategies)	\$16,228.66
Mediation	\$11,000.00

The total of these costs are \$1,374,337.60. When combined with the costs set forth in paragraph 3 above, the total is \$1,833,130.

6. In addition, to the extent that any of the costs listed in Paragraphs 3 in this Declaration

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are denied as part of the cost or fee award to the Class, Class Counsel respectfully requests that they be considered as also requested here, for reimbursement from the common fund, since they were actually expended on behalf of the Class and since the total amount is only 2% of the fund obtained for the Class.

7. It should be noted that Class Counsel seek a total award of costs rather than separate awards to different firms, because even though costs were incurred by one firm they may have been paid by another, so that the firm actually carrying the expense is sometimes different from the firm that incurred it.

**Attorneys' Fees**

7. Class Counsel at Berry & Leftwich have expended the following hours in prosecuting the claims in this case:

<b><u>Attorney</u></b>	<b><u>Total Hours</u></b>	<b><u>Hourly Rate</u></b>	<b><u>Fees</u></b>
R. Stephen Berry	2,790	\$725.00	\$2,022,750
J. Daniel Leftwich	2,454	\$500.00	\$1,227,000
Gregory Baruch	2,387	\$500.00	\$1,193,500
Paralegals	1,280	\$150.00	\$192,000
<b><u>Total:</u></b>			<b>\$4,635,250</b>

8. Mr. Berry has practiced law for thirty-three years, Mr. Leftwich has done so for nineteen years, and I have practiced law for twenty years. All of us have extensive experience with class actions and complex litigation (further detail about our qualifications is contained in the Declarations appended to Plaintiff's Motion for Class Certification in this case). The current fee

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rates provided are 2007 non-contingent figures submitted to and accepted by the U.S. District Court for purposes of lodestar calculation in *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp.2d 322, 341 (E.D. Pa. 2007). *See* Declaration of Gregory Baruch in Support of Application for Attorneys' Fees and expenses in *Bradburn*, appended hereto as Exhibit 1. The rates listed above were reached based on a review of non-contingent rates charged by attorneys with comparable experience engaged in comparably complex litigation, and included review of data reflecting attorneys' hourly rates in Washington, D.C. I have not adjusted them to reflect increases in rates between 2007 and 2008.

9. The rates set forth for Mr. Leftwich and myself are below the highest reported rate (\$575/hour) charged in Oregon in 2006 according to the Oregon State Bar Economic Survey for 2007. The rate set forth for Mr. Berry, while higher than the highest 2006 rate reported in the Oregon State Bar Economic Survey (which only includes data from less than 20% of Oregon lawyers), is approximately \$300 per hour less than the rate reportedly charged by one of Defendant's counsel in this case, Mr. Arquit. *See* Nathan Koppel, "Lawyers Gear Up Grand New Fees: Hourly Rates Increasingly Hit \$1,000, Breaching a Level Once Seen As Taboo," *Wall Street Journal*, Aug. 22, 2007, appended as Exhibit 2. Moreover, I have also inquired as to the rates charged by comparable counsel in San Francisco, and find that Mr. Berry's hourly rate is also consistent with such rates.

10. As the above chart reflects, total attorney hours expended thus far by Berry & Leftwich are 7,680, and total hours including both attorney and paralegal time are 8,992. This time is recorded in the business records of Berry & Leftwich maintained in the ordinary course of business

since this case began and is prepared from contemporaneous records. Time records for all of the above are maintained as business records at the offices of Berry & Leftwich, and are appended to this Declaration as Exhibit 3 (Berry time sheets, not reflecting deductions described in paragraphs 11-12 below)<sup>1</sup>; Exhibit 4 (Leftwich time sheets); Exhibit 5 (Baruch time sheets, not reflecting deductions described in paragraph 12 below); and Exhibit 6 (paralegal time).

11. In the hours set forth above, I have deducted one-half of the travel time recorded (except for Mr. Leftwich's hours, which already incorporate this reduction, and for some days on my own time records which incorporate this reduction). This means that I have deducted 123.5 hours for Mr. Berry and 104.75 hours for myself. For Mr. Berry, this represents time on the following days: in 2004, Aug. 22-24 and Sept. 21; in 2007, Aug. 10, Sept. 8, 17, and 20, Oct. 28 and 30-31, Nov. 14 and 17, Dec. 2, 5, and 17; in 2008, Jan. 21, 23, 29-31, Mar. 2, 9, 11, 13, 15, 21, 26-27, and 31, and April 1-2 and 20. For myself, this represents travel time on the following days: in 2004, Oct. 13 and 15, Nov. 7- 8, Dec. 7, 9, 20-22 and 28-29; in 2005, April 19-20, 28 and 30; in 2007, Sept. 18 and 21, Oct. 23 and 26, Nov. 12 and 15, and Dec. 2 and 4; and in 2008, Jan. 21 and 23, March 9, 11, 25, 27 and 29-30, and April 1 and 29. In addition, I have deducted all of the travel time for April 26 and 27, 2008. Finally, in some cases I have modified the timesheets for my time to reflect deductions in cases in which I concluded that the work should have been performed more efficiently. These deductions are reflected in the timesheets and are incorporated in the totals provided above.

13. Other Class Counsel have also expended significant time in this case. That time is

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<sup>1</sup> It should be noted that Mr. Berry's time is in two parts, reflecting billing to two different sub-accounts.



set forth in Declarations by William Buchanan and Stephen Crew that will be separately filed with the Court.

14. Class Counsel took this case with the expectation that they would receive a risk enhancement if they were to prevail, and the hourly rates proposed are for non-contingent work and do not reflect any risk of non-payment.

15. On this day, Class Counsel is submitting to the Court true and correct copies of Berry & Leftwich's actual cost records, on which the cost figures in this Declaration are based.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15<sup>th</sup> day of May, 2008.

  
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GREGORY BARUCH